

### **§ 6-301. Promulgating order.**

Pursuant to the provisions of Neb. Rev. Stat. § 25-1273.01, the Supreme Court does hereby promulgate the following discovery rules in civil cases, effective as of January 1, 1983.

These rules shall, as written, apply in the district courts, and in all other courts of Nebraska to the extent not inconsistent with other statutes. Rules 26 and 37 are applicable to county courts as to actions pending in those courts on the effective date of these rules.

### **§ 6-326. General provisions governing discovery.**

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivisions (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and

(ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the district court in the district where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his or her response with respect to any question directly addressed to

(A) the identity and location of persons having knowledge of discoverable matters, and

(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which

(A) he or she knows that the response was incorrect when made, or

(B) he or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court or by agreement of the parties.

(f) Service of Discovery Papers. Except as otherwise ordered by the court, every discovery paper and every motion relating to discovery and response thereto required to be served upon a party shall be served upon each of the parties not in default for failure to appear.

(g) Filing of Discovery Materials. Discovery materials that do not require action by the court shall not be filed with the court. All such materials, including notices of deposition, depositions, certificates of filing a deposition, interrogatories, answers and objections to interrogatories, requests for documents or to permit entry upon land and responses or objections to such requests, requests for admissions and responses or objections to such requests, subpoenas for depositions or other discovery and returns of service of subpoenas, and related notices shall be maintained by the parties.

Discovery materials shall be filed with the court only when ordered by the court or when required by law. If the original of a deposition is not in the possession of a party who intends to offer it in evidence at a hearing, that party may give notice to the party in possession of it that the deposition will be needed at the hearing. Upon receiving such notice the party in possession of the deposition shall either make it available to the party who intends to offer it or produce it at the hearing.

#### **§ 6-329. Stipulations regarding discovery procedure.**

Unless the court orders otherwise, the parties may by written or otherwise recorded stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and

(2) Modify the procedures provided by these rules for other methods of discovery.

#### **§ 6-334(A). Discovery from a nonparty without a deposition.**

*Exported on Fri Aug 05 2016 11:32:23 GMT-0500 (Central Daylight Time)*

(a) Procedure.

(1) Scope. Any party may, by subpoena without a deposition:

(A) require the production for inspection, copying, testing, or sampling of designated books, papers, documents, tangible things, or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, and other data compilations from which information can be obtained) translated if necessary by the owner or custodian into reasonably

usable form, that are in the possession, custody, or control of a person who is not a party and within the scope of Rule 26(b); or

(B) obtain entry upon designated land or other property within the scope of Rule 26(b) that is in the possession or control of a person who is not a party for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(2) Notice. A party intending to serve a subpoena pursuant to this rule shall give notice in writing to every other party to the action at least 10 days before the subpoena will be issued. The notice shall state the name and address of the person who will be subpoenaed, the time and place for production or entry, and that the subpoena will be issued on or after a stated date. A designation of the materials sought to be produced shall be attached to or included in the notice.

Such notice may be given by a party other than a plaintiff at any time. Such notice may not be given by a plaintiff until the time at which Rule 30(a) would permit a plaintiff to take a deposition.

(3) Issuance. A subpoena may be issued pursuant to this rule, either by a request to the clerk of the court or by an attorney authorized to do so by statute, at any time after all parties have been given the notice required by subsection (2). The subpoena shall identify all parties who were given notice that it would be issued and the date upon which each of them was given notice. A subpoena pursuant to this rule shall include or be accompanied by a copy of this rule.

(4) Time, manner, and return of service. A subpoena pursuant to this rule shall be served either personally by any person not interested in the action or by registered or certified mail not less than 10 days before the time specified for compliance. The person making personal service shall make a return showing the manner of service to the party for whom the subpoena was issued.

(b) Protection of Other Parties.

(1) Objection Before Issued. Before the subpoena is requested or issued any party may serve a written objection on the party who gave notice that it would be issued. The objection shall specifically identify any intended production or entry that is protected by an applicable privilege, that is not within the scope of discovery, or that would be unreasonably intrusive or oppressive to the party. No subpoena shall demand production of any material or entry upon any premises identified in the objection. If the objection specifically objects that the person served with the subpoena should not have the option to deliver or mail copies of documents or things directly to a party, the subpoena shall not be issued unless all parties to the lawsuit mutually agree on the method for delivery of the copies.

(2) Order. The party who gave notice that a subpoena would be issued may apply to the court in which the action is pending for an order with respect to any discovery for which another party has served a written objection. Upon hearing after notice to all parties the court may order that the subpoena be issued or not issued or that discovery proceed in a different manner, may enter

any protective order authorized by Rule 26(c), and may award expenses as authorized by Rule 37(a)(4).

(3) Protective Order. After a subpoena has been issued any party may move for a protective order under Rule 26(c).

(c) Protection of the Person Served with a Subpoena.

(1) Avoiding Burden and Expense. A party or an attorney who obtains discovery pursuant to this rule shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court by which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings of the person subject to the subpoena and reasonable attorney fees.

(2) Responding to the Subpoena.

(A) A person served with a subpoena pursuant to this rule shall permit inspection, copying, testing, or sampling either where the documents or tangible things are regularly kept or at some other reasonable place designated by that person. If the subpoena states that the person served has an option to deliver or mail legible copies of documents or things instead of inspection, that person may condition the preparation of the copies on the advance payment of the reasonable cost of copying.

(B) A person served with a subpoena pursuant to this rule may, within 10 days after service of the subpoena, serve upon the party for whom the subpoena was issued a written objection to production of any or all of the designated materials or entry upon the premises. If objection is made, the party for whom the subpoena was issued shall not be entitled to production of the materials or entry upon premises except pursuant to an order of the court. If an objection has been made, the party for whom the subpoena was issued may, upon notice to all other parties and the person served with the subpoena, move at any time in the district court in the county in which the subpoena is served for an order to compel compliance with the subpoena. Such an order to compel production or to permit entry shall protect any person who is not a party or an officer of a party from significant expense resulting from complying with the command.

(3) Protections. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(A) fails to allow reasonable time for compliance,

(B) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(C) subjects a person to undue burden.

(d) Duties in Responding to Subpoena.

(1) Production. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) Objection. When information subject to a subpoena is withheld on an objection that it is privileged, not within the scope of discovery, or otherwise protected from discovery, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the party who requested the subpoena to contest the objection.

(e) Coordination.

(1) Copies. If the party for whom the subpoena was issued creates or obtains copies of documents or things, that party shall make available a duplicate of such copies at the request of any other party upon advance payment of the reasonable cost of making the copies.

(2) Inspection. If a notice of intent to serve a subpoena designates that the subpoena will require entry upon land or other property for the purposes permitted by subsection (a)(1)(B), any other party shall, upon request to the party who gave the notice, be named in the subpoena as also attending at the same time and place.

#### **COMMENT TO RULE 34A**

Authority to issue a subpoena pursuant to this rule is governed by Neb. Rev. Stat. § 25-1273. The procedure is similar to the practice for nonparty nondeposition discovery under Fed. R. Civ. P. 45, with certain topics such as the time of prior notice and coordination of the disclosure more specifically defined. **This procedure is optional, so a party may elect to use a deposition or any other available discovery procedure instead.**

#### **§ 6-336. Requests for admission.**

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party.

Each matter of which an admission is requested shall be separately set forth by the party making the request, and shall be repeated by the responding party in the answer or objection thereto. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his or her attorney, but, unless the court shortens the time, a

defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the summons upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, he or she shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he or she states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he or she may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he or she cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

**(b) Effect of Admission.** Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining his or her action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding.